IN THE HIGH COURT OF JUDICATURE AT MADRAS

Dated: 13.2.2007

Coram:

The Honourable Mr.Justice J.A.K.SAMPATH KUMAR

A.S.No.575 of 1991

1.M/s.Green Roadways(Regd)
Transporters,
Central Administrative Office,
3900, Hamilton Road,
Morigate, Delhi 110 006.

2.Messrs.Rustom Processors Ltd.,
'Brij House'
Opp.Gujarat High Court
Stadium Road,
Ahmedabad 380 014. .. Defendants 6 and 7
/Appellants

-Vs-

1.M/s.Anraj Co.
Proprietoryship Concern
237 Oppanakkara Street
Coimbatore 641 001 ..Plaintiff
by its Sole Proprietor
Anraj Mutha (Died)

2.M/s.Shreefab Industries,
Partnership Firm
166-A Podanur Main Road
First Floor,
Coimbatore 641 023.

3.Hariprasad Agarwal
by partners
Respondents 2, 4, 5, 6

4.Suresh Agarwal

5.Purushotham Agarwal

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6.Geethadevi Agarwal

7.A.Jawaharlal

8.A.Ashok Kumar
9.A.Nirmal Kumar
10.A.Lalitha
11.Indra
12.Fancy ..Defandants 1 to 5/
Respondents

Rr7 to 12 are brought on
record as LRs of the deceased
1st respondent as per order
of Dy.Registrar in CMP.17886/92
dated 16.2.96.

The Appeal is filed Under Section 96 of the Civil Procedure Code against the Judgment and decree dated 16.10.1989 made in O.S.No.704 of 1985 on the file of the I Additional Subordinate Judge's Court, Coimbatore.

For Appellants : Mr.A.Anbarasan for
Mr.T.M.Hariharan
For Respondents
RR2 to 6 : Mr.M.S.Krishnan

RR7 to 12 : Mr.Srinath Sridevan

JUDGMENT

This appeal is filed against the Judgment and decree dated 16.10.1989 made in O.S.No.704 of 1985 on the file of the Subordinate Judge's Court, Coimbatore in and by which the learned Sub Judge after analysing the evidence found that the plaintiff is entitled for the suit claim and accordingly decreed the suit against defendants 6 and 7 while dismissing the suit against defendants 1 to 5.

2. For convenience, the parties are referred as arrayed in the original suit.

3. The plaintiff states as follows:-

3.1. The plaintiff is a proprietory concern represented by its sole proprietor Mr.Anraj Mutha, who is doing wholesale business in cloth and other textile goods at Coimbatore. The plaintiff concern is having business contacts all over India. The 1st defendant is a partnership firm of which defendants 2 to 5 are the partners.

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3.2. On 4.5.83 the 3rd defendant representing the 1st defendant entrusted 11 bales of grey powerloom cloth measuring 12173.75 metres of the value of Rs.47,558-64 as per its invoice No.36 for transporting the same from Coimbatore to Ahamedabad with an endorsement "Delivery to self" with the 6th defendant's branch office (Greenways Road(Regd) a lorry transport Company) for the bales so booked to Ahmedabad as aforesaid with the 6th defendant transport company, the transport company issued two G.C.Notes on the same date bearing Nos.525288 for 4 bales and 525289 for 7 bales.

3.3. Again on 7-5-83 the 3rd defendant representing the 1st defendant booked 19 bales of grey power loom cloth containing 21235 metres of the value of Rs.81,073/- as per the invoice No.38 with the 6th defendant transport company having its branch office at Coimbatore, who issued a G.C.Note on the same day bearing No.525174.

3.4. Similarly on 24.5.1983 the 3rd defendant representing the 1st defendant booked 18 bales of grey powerloom cloth measuring 20,000/- metres of the value of Rs.76,360/- as per its invoice No.46 with the 6th defendant having its branch office at Coimbatore who on the same date issued a G.C.Note bearing No.525094.

3.5. All the above goods were booked as aforesaid from Coimbatore to Ahmedabad with an endorsement delivery to Self'. The 3rd defendant representing the 1st defendant represented to the plaintiff that the firm 1st defendant and its partners viz., defendants 2 to 5 have full title over the property covered under the aforesaid Lrs and invoice and persuaded the plaintiff to pay for them and obtain an endorsement of all the above G.C.Notes in favour of the plaintiff. In pursuance of this representation the plaitniff issued a cheque daed 4.5.83 for Rs.47000/- on the Union Bank of India, Coimbatore drawn in favour of the 1st defendant towards the value of the goods covered under Invoice No.36 and handed over the same to the 1st defendant's clerk Thiru.Venkataraman.

3.6. Similarly the plaintiff issued another cheque dated 7.5.83 for Rs.81,000/- on Union Bank of India, Coimbatore, drawn in favour of the 1st defendant towards the value of the goods covered under Invoice No.38 and handed over the same to the 1st defendant's clerk Thiru.Venkataraman.

3.7. Likewise the plaintiff issued another cheque dated 25.5.83, for Rs.72,000/- on Union Bank of India, Coimbatore drawn in favour of the 1st defendant towards the value of the goods covered under Invoice No.46 and handed over the cheque into the hands of the 3rd defendant.

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3.8. All the above three cheques have been issued by the plaintiff towards the value of the goods covered under the aforesaid invoices and LRs only the representation made by defendants 1 to 5 that they have full title over the goods covered by them. But for the persuassion and representation as aforesaid the plaintiff would not have issued these three cheques at all. The LRs dated 4.5.83 have been endorsed in favour of the plaintiff by the 3rd defendant representing the 1st defendant. The LR dated 7.5.83 has been endorsed in favour of the plaintiff by the 4th defendant representing the 1st defendant. The LR dated 24.5.83 has been endorsed by the 3rd defendant representing the 1st defendant in favour of the plaintiff.

3.9. The defendants 1 to 5 represented to the plaintiff that the goods covered under the aforesaid documents would be taken delivery of by the 7th defendant at Ahmedabad by retiring the documents at Ahmedabad through Union Bank of India at Ahmedabad to whom the plaintiff sent the documents through Union Bank of India, Coimbatore.

3.10. After the aforesaid documents were so sent to Ahmedabad on the representation made by defendants 1 to 5, the plaintiff waited for a fairly long time. But to his surprise, those documents were not retired at the other end by the 7th defendant through Bank at all. On the other hand, the plaintiff came to know later that the 7th defendant has received the goods from the 6th defendant straightaway without the presentment of any documents whatever. The 6th defendant had no business to part with the goods in favour of the 7th defendant without the 7th defendant presenting the LRs therefor.

3.11. The Union Bank of India, Coimbatore intimated the plaintiff that the documents have not been retired at Ahmedabad by the 7th defendant.

3.12. The plaintiff on coming to know about this, issued notices to the defendants 6 and 7 inter alia threatening criminal prosecution against them, the 6th defendant did not send any reply. The 7th defendant sent a reply through its advocate wherein inter alia he has stated that he has had transactions with the 1st defendant firm for quite some time by and under which the 1st defendant firm seems to be owing to 7th defendant quite a lot of money. The 7th defendant claims that even in the past he was taking delivery of goods from the 6th defendant without presentment of the respective LRs to them.

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3.13. The three demand drafts that have been sent by defendants 3 and 4 representing 1st defendant have also been dishonoured and returned to the plaintiff through his bankers. Hence the suit.

4. Defendants 1 to 5 state as follows:-

The plaintiff is a financier and there had been several transactions with the 1st defendant, whereunder, the lorry receipts have been endorsed by the 1st defendant in favour of the plaintiff and the consignee had retired the bills and the plaintiff had realised the sum due. Equally on several occasions, the plaintiff had gone to place of goods destination and taken delivery of the goods from carrier and realised the value by sale in open market. So, the goods are to be delivered by the carrier on presentation of the way bill. The invoice value was higher, but the plaintiff had issued a cheque for a lesser amount, adjusting the balance towards the charges due to them. The plaintiff has also suppressed the fact that the goods are sold at a higher price than the invoice price at the destination. The packages contained the actual goods stated in the invoice, in good condition. The goods were entrusted with the carrier in the course of their business to be delivered to the consignee on production of the way bill. On endorsement of the way bill, the plaintiff has purchased the bills and the title to the goods covered by the invoice has developed upon the plaintiff/endorsee. The goods despatched belonged absolutely to the firm and on endorsement of the way bill, the ownership has been transferred in favour of the plaintiff. So the plaintiff was the owner of the goods consigned through the 6th defendant to be delivered to the 7th defendant. On endorsement of the invoice, the defendant has ceased to be the owner of the goods and the plaintiff had become the owner of goods. Hence, the suit is liable to be dismissed.

5. Sixth defendant states as follows:-

5.1. The alleged contract is for the sale of the specific goods to be delivered to the seventh defendant in Ahmedabad. Therefore the seventh defendant is admittedly the person entitled to get the consignment. The liability is not that of this defendant, who is only a carrier. He is an unnecessary party to this suit.

5.2. The G.C.Note referred to in the plaint is not a document of title. It is merely a receipt intended to show the persons concerned. If the plaintiff had advanced any moneys on the strength of these G.C.notes, the plaintiff must thank himself for having advanced moneys on doubtful security.

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5.3. When once goods are entrusted with a carrier in a deliverable state, the title to the same passed to the consignee the moment they are entrusted with the carrier. The non-payment or postponement of the price does not affect the nature of the transaction.

5.4. The only remedy of the plaintiff, if any, is to restrict his claim against the defendants 1 to 5 only to whom the plaintiff claims to have advanced moneys. In any view, this defendant is not liable for the transaction between the plaintiff and the defendants 1 to 5. The plaintiff is neither the consignor nor the owner of the goods and so cannot have any cause of action, at any rate against this defendant or question the delivery to the seventh defendant. It was done properly and in accordance with practice. Therefore, the suit is liable to be dismissed.

6. Seventh defendant states as follows:-

6.1. No cause of action has arisen against this defendant within the jurisdiction of this court.

6.2. The defendant No.1 had no right or power to endorse the documents in question in favour of the plaintiff and any such endorsement without the consent or knowledge of this defendant No.7 is not binding upon this defendant.

6.3. It may be that the defendant Nos. 1 to 5 may have played fraud on the plaintiff as alleged or otherwise. However, this defendant is not concerned with the transactions between the plaintiff and the defendant Nos. 1 to 5. This defendant No.7 was and is entitled to take delivery of goods from the defendant Nos.1 to 5. It is true that this defendant has filed a suit against defendant No.1 being Civil Suit No.4496 of 1983 in the City Civil Court at Ahmedabad for the recovery of Rs.66054.78 ps.

6.4. Though it is alleged that the 3 suit lorry receipts were endorsed in favour of the plaintiff, neither the plaintiff nor the defendants 1 to 5 chose to give any notice of the alleged endorsement or discounting of the suit lorry receipts to this defendant. On the other hand it was the 1st defendant who was claiming the value of the suit goods from this defendant who though its various legal notices and letters even after the alleged discounting or endorsement of the suit lorry receipts. The 1st defendant also did not care to send the copies of the Demand Drafts to this defendant as rightly admitted by plaintiff in the plaint.

6.5. The defendant has taken delivery of the goods in question without the LRs concerning the respective consignments as per the practice followed by them and the defendant No.1 was who had sold

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the said goods to them. Many times payments were made by this defendant No.7 to the defendant No.1 even before the receipt of the bales. On their promise to supply the goods moneys were paid by this defendant in advance to them. On the other hand, for certain bales, moneys were paid and goods were delivered after a very long time. Thus the delivery of goods and payment of price thereof were not consistent of each other. This practice of taking delivery of goods without production of Lrs was established and recognised by this defendant NO.7 since long. The defendant No.1 was fully aware of this practice and not only did they not object to it, they themselves consented and concurred to this practice generally prevailing amongst the business community. Hence defendants 1 to 5 and/or their alleged assignees viz., plaintiff are estopped from disputing or complaining delivery of the suit goods to this defendant without producing lorry receipt.

6.6. Even assuming without admitting that the 6th defendant had effected wrongful delivery of the suit goods to this defendant, then also the plaintiff is not entitled to claim any relief against these defendants. After taking delivery of the suit goods from the 6th defendant, this defendant was holding the suit goods for a pretty long time and in the meantime this defendant was also keeping negotiations and correspondence with defendants 1 to 5 in order to settle the accounts between them in a cordial manner, But defendants 1 to 5 did not take advantage of the good intention of this defendant, but indulged in harping upon litigation after litigation. Therefore, this defendant had to file a suit in O.S.No.4496 of 83 before the City Civil Court, Ahmedabad for claiming its dues against the 1st defendant firm after giving credit for value of the suit goods. Even the defendants 1 to 5 did not find reason to come to reasonable terms. In the meanwhile the suit goods lying at the godown of this respondent began to deteriorate further in quality and condition. In order to mitigate the loss and damages, this defendant filed an application before the City Civil Court, Ahmedabad for permission to process and dispose off the suit foods. The Honourable Court was pleased to grant the permission as above. On account of the latches of defendants 1 to 5 and on account of these indifference and litigant attitude as explained above, this defendant had to incur further loss and damages. Hence this defendant has duly accounted for the suit goods delivered to them and neither this defendant nor the 6th defendant is liable to pay any further amounts to plaintiff. Hence, the suit is liable to be dismissed.

7. First plaintiff was examined as P.W.1. Ex.A.1 to Ex.A.51 were marked on the side of the plaintiff. M/s.Suresh Agarwal and Joshi were examined as D.W.1 and D.W.2. Exhibits B1 to B9 were marked on the side of the defendants to confront the claim of the plaintiff.

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8. The lower court after analysing the evidence in depth found that the plaintiff is entitled to the suit claim and accordingly decreed the suit against D6 and D7.

9. Present appeal is filed against such finding by D6 and D7. Heard Mr.A.Anbarasan, learned counsel for appellants,Mr.M.S.Krishnana, learned counsel for respondents 2 to 6 and Mr.Srinath Sridevan, learned counsel for respondents 7 to 12.

10. Upon hearing the rival claims, the points for determination are:-

1) Whether the 7th defendant is the purchaser of the consignment sent by defendants 1 to 5?
2) Whether the plaintiff is the assignee for valuable consideration in respect of the consignment sent to the 7th defendant?
3) Whether the 6th defendant is the carrier for the consignment for the onward delivery to the 7th defendant?
4) Whether the 6th defendant violated clause 2 of the agreement and delivered the goods to the 7th defendant without retirement of the documents with reference to the consignment sent by the 1st defendant firm?
5) Whether the delivery of the consignment by the 6th defendant to the 7th defendant is in accordance with the practice without retirement of consignment from the concerned bank as stated by the 6th defendant, can be accepted.
6) Whether the decree of the lower court against D6 and D7 alone is in order?
7) Whether the plaintiff is the absolute owner of the disputed consignment?
8) Whether the 6th defendant admitted his liability based on the receipt as per Ex.A.3?

11. Points 1 to 3:-

11.1. It is true that defendants 1 to 5 are the owners of the goods in dispute. It is also true that the 7th defendant is the purchaser of the goods from defendants 1 to 5. It is also true that the 6th defendant is the carrier to transport the disputed consignment to the 7th defendant entrusted by defendants 1 to 5.

11.2. It is also true that the plaintiff is the assignee of the consignment note for valid consideration. Ex.A.1 to A7 would vouch that defendants 1 to 5 transported the disputed consignment to the 7th defendant through the 6th defendant. Ex.A.8 to Ex.A.13 would prove that the plaintiff is the assignee of the disputed consignment for valid consideration. There is no dispute regarding these facts. Therefore these points are answered in favour of the plaintiff.

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12. Point No.4 and 5:-

12.1. The learned counsel for the appellant contended that the goods were delivered by the 6th defendant to the 7th defendant without consignment note from the concerned bank during the relevant point of time as per practice and therefore there was no violation of any conditions as contended by the plaintiff. Learned counsel for the respondent/plaintiff drew my attention to clause 2 of the consignment note and contended that the 6th defendant had to deliver the goods to consignee only on retirement of the consignment note from the concerned bank and that no practice prevail during the relevant point of time, to deliver the goods of the consignment without retirement of the consignment note from the concerned bank and therefore, the carrier is liable to the suit claim for such violation. Clause 2 of the terms and conditions of the carrier referred in the consignment which is marked as Ex.A.2 reads as follows:_

> "The Transport Operator undertakes to and shall deliver the goods in the like order and conditions as received subject to any deterioration in the condition of goods resulting from natural causes like effect of temperature, weather conditions etc. to the Consignee Bank or to his order or his assigns on the relative receipt being surrendered to the Transport Operator duly discharged by the Bank which had accepted it for lending to and collection of or discounting the bills of its customers or for collection, or to its agents for collection, or duly discharged by the holder of the receipt along with a letter from such bank authorising delivery of the goods and only the Bank and the holder of the receipt entitled to delivery as aforesaid shall have right of recourse against the Transport Operator for all claims arising thereon."

12.2. Ex.A.3 is another consignment note. It is admitted that the 6th defendant without production of the consignment note delivered the disputed consignment to the 7th defendant contra to the condition referred above. At this juncture, the principle laid down in the decision reported in SHANMUGA SUNDARAM PILLAI ALIAS SOMASUNDARAM PILLAI VS. NATIONAL INSURANCE COMPANY LTD MADURAI AND ANOTHER (2001 CTC 346)is referred for better appreciation of the case on hand. It is held that the Burden of proof is on the carrier to prove that they were not negligent and that there was no criminal act.

12.3. In the decision reported in AIR 1958 Bombay 120(V 45 C 35) in the case of M/S.DAULATRAM RAMESHWARLAL VS B.K.WADEYAR, it is held that:

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" The contract is an F.O.B. contract, and the price is to be paid by the exporter to the purchaser only on presentation of bills of lading. Therefore, two important and salient facts emerge from this; one that the deliver of the goods is not obtained by the exporter till after the goods have crossed the customs barrier and the price is not received by the sellers, the appellants, till they gave the delivery of goods across the customs barrier, because it is not disputed that the bills of lading could only be prepared after the customs duty on the goods had been paid and they had passed the customs barrier. Now, the question of passing of property is normally a question of intention, and the intention of the parties must be gathered from the terms of the contract. It is true that if the goods are appropriated to a contract, the property will pass. But the appropriation must be unconditional, and if the appropriation is not unconditional, then the property will only pass when the condition is satisfied. In the contract before us it seems to us that it is clear that there was no unconditional appropriation of the goods by the appellants towards the contract. The appropriation was conditional upon the payment being made by the exporters on the presentation of the bills of lading, and therefore, it is clear that the sellers wanted to keep the power of disposal over the goods till they had received the payment from the exporters. This fact is borne out rather emphatically by the circumstance that although the bills of lading were to be made out in the name of the exporters, the bills of lading were to be retained by the appellants, and the appellants would not part with the bills of lading till payment had been made to them by the exporters. Now, the Advocate-General has suggested two reasons why we should hold that the property had already passed in the goods before the goods crossed the customs barrier, and the first circumstance upon which considerable emphasis is laid by the Advocate-General is that the bills of lading in this case were taken out in the name of the exporters and not in the name of the sellers, and the Advocate-General is that the bills of lading in this case were taken out in the name of the exporters and not in the name of the sellers, and the Advocate-General says that if the intention was that the property should not pass, then one would have found a provision in the contract that the bills of lading should he made out in the name of the sellers and a

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provision that the exporter was to get the bills of lading, although they were in his name, only after he paid the price of the goods. In the first case on the price being paid, the seller would have to endorse the bill of lading in favour of the exporter. In the latter case, he would have physical control over the bills of lading till the price was paid. In either case the exporter would not be able to make any use of the bills of lading till the price was paid. In either case the exporter would not be able to make any use of the bills of lading till he had paid the price. In a F.O.B. Contract, delivery is ordinarily given by means of shipping documents, and therefore, in both the cases we are contemplating the delivery would only be given against payment. In one case the delivery would be given on the shipping documents being endorsed over by the seller to the exporter and in the other case, the delivery would be given by the sellers by the bills of lading being physically handed over to the exporter."

12.4. It is held in the decision reported 1974 Tax Law Reporter 2332 in the case of KUPPUSWAMI MUDALIAR AND SONS VS. STATE OF MADRAS that :

"Where the dealer despatched the goods to a out-State purchaser and sent railway receipt through Bank, the date of sale would be the date on which railway receipt had been retired from the Bank in view of Section 19 of the Sale of Goods Act, 1930. If on that date the purchaser was a registered dealer under the Act, the seller would be entitled to the concessional rate under Section 8(1) of the Act."

The above principles would show that the carrier has violated the condition of the consignment note and as such he is also responsible of the claim of the plaintiff.

12.5. It is the specific case of the 6th defendant that according to the prevailing practice between the parties to the transit, the delivery of the consignment by the 6th defendant to the 7th defendant without retirement of the consignment note from the concerned bank cannot be stated to be wrong. If that be so, it is only for the 6th defendant to prove such practice to sustain his claim. Except the written pleadings, there is nothing on record to show that as per the customary practice, the 6th defendant delivered the consignment to the 7th defendant without retirement of the consignment note from the concerned Bank. Moreover, no one given evidence on the side of the 6th defendant to sustain this claim. The said written pleadings is against the conditions referred in Ex.A2 and Ex.A.3. The said Act is violative to the conditions of

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the contract. Therefore, the contention of the learned counsel for the appellant that the delivery of the consignment, which is under dispute, by 6th defendant to 7th defendant without retirement of the consignment note cannot be accepted. Hence these points are answered against the defendant.

13. Point 7:- As per documents filed herein show that the plaintiff is the absolute owner of the consignment with the valid title. In pursuance of the assignment of the consignment note by the defendants 1 to 5 in favour of the plaintiff for valuable consideration counter foils and Bank challons were also recorded in the name of the plaintiff. The genuineness of these documents were not disputed by the defendants. Moreover, the concerned bank returned the said consignment note to the plaintiff stating that the consignment note was not retired due to non payment by the 7th defendant. Since the said consignment note was not taken delivery by the 7th defendant on payment, the same was sent back to the plaintiff for necessary action. Only on receipt of the original consignment note, the same were filed in this case to prove the bonafide claim. The letter of the bank is also filed to corroborate the testimony of the plaintiff. Ex.A.30 would prove the valid assignment of the goods under transit in favour of the plaintiff only by due payment for the same. At this juncture, it is useful to refer the contents of Ex.A.14. The said letter was sent by the concerned bank to the plaintiff for necessary action.

TO WHOMSOEVER IT MAY CONCERN

This is to certify that the following bills of M/s.Anraj & Co were set for collection by us and were returned unpaid as per details given below:-

DBC No & Date	Drawer	Drawee&Address	LR Nos	Amount	Date of return of the documents to party
1105 26.5.83	M/s.Anraj&Co	M/s Rustom Processors Ltd. Brij House Stadium Road Gujarat High Court,Ahmedabad	525094 dated 25.5.83 Green Roadways Inv. No.46	72360.00	13.9.1983
1168 28-7-83	-do-	-do-	525114	81,073.00	27.9. 1983

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1180 13.8.83	-do-	-do-	525288 of Green Roadways dt.4.5.83 Inv.No.36	47,558.64	25.11 .1983

This certificate is issued at the request of the party to file legally against the respective drawee.

Sd/-....
(A.SOMASUNDARAM)
BRANCH MANAGER.

This letter would show that the 7th defendant took delivery of goods from the 6th defendant without making any payment for the same. In such view of the fact, I am constrained to hold that the plaintiff is the absolute owner of the consignment for the value paid for which he got assignment from defendants 1 to 5. Hence, this point is answered in favour of the plaintiff.

Point No.8:- 14. It is the specific case of the plaintiff that the 6th defendant admitted his liability and issued certificate and also relied on Ex.A.31 in support of his claim and the said letter reads as follows:-

ANNRAJ MUTHA
PROPRIETOR
Annraj and Company,
Coimbatore.

I, the under signed Rajendra Kumar Sachdev Manager, Green Roadways, Ahamadabad, affirm that I am appointed Manager in this Office. I am in sold inchage and responsible for the dealings here:-

The case 306 of 1984 filed by Anraj Co., for the goods consignee were received by us and were delivered to M/s.Rusthom Process, without obtaining the way Bills (Receipts) The entire payments for the said goods is my responsibility and to be cleared by 30.10.1984 which I undertake and gave in writing. I also undertake the responsibility to clear the payments by M/s.GREEN ROADWAYS and stand fully responsible, and give by acceptance.

Illegible
5.10.1984.
For Green Roadways(Regd)
AHMEDABAD.

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15. While marking this document by P.W.1, counsel for the 6th defendant suggested that this document was fabricated for the purpose of the case. However, there is nothing on the record to show that this document was fabricated for the purpose of this case. It is worthy to note that the 6th defendant not let in any evidence to prove that Ex.A.31 was fabricated for the purpose of this case. As per the said letter, the 6th defendant owes responsibility, to clear the payments due to the plaintiff.

16. If really the 6th defendant has not issued Ex.A.31 and the same has been fabricated by the plaintiff, to sustain his claim, some one on behalf of the 6th defendant could have appeared and confronted the claim of the plaintiff on the basis of Ex.A.31. In the absence of such evidence on the side of the 6th defendant, I am constrained to arrive at a finding that Ex.A.31 is the document issued by the 6th defendant admitting his liability as he had delivered the goods to the 7th defendant violative to the clause 2 of the conditions of the agreement. Hence, this point is answered in favour of the plaintiff.

17.Point No.6:-

17.1. In view of the findings rendered in points 1 to 5, 7 and 8, the plaintiff is entitled to suit claim. The plaintiff claims amount against defendants 1 to 7. The lower court granted order against defendants 6 and 7 alone negativing the claim against defendants 1 to 5. Now, I have to find out whether such a finding, exonerating defendants 1 to 5 is in order.

17.2. Admittedly, defendants 1 to 5 received the value of the consignment assigned to the plaintiff. Admittedly, the 7th defendant filed the suit against the 1st defendant claiming some amount including the amount referred to, the suit transaction. The 7th defendant relied on Ex.B1 to Ex.B.9 to prove that he had obtained an order against first defendant, for sale of the properties under dispute and appropriate the same towards the claim in O.S.No.4496 of 1983 on the file of the City Civil Court, Ahmedabad. The genuineness of Ex.B.8 and Ex.B.9 was not questioned by the first defendant. The first defendant received the entire amount with reference to the suit claim from the plaintiff.

17.3. Admittedly, the plaintiff did not receive the suit claim from the 7th defendant, as the 6th defendant delivered the consignment to the 7th defendant without retirement of the consignment note from the concerned bank as per Ex.B.8 and Ex.B.9. Defendants 1 to 5 have also not paid the suit claim to the plaintiff. Further the 1st defendant did not dispute the claim in O.S.No.4496/83 on the file of the City Civil Court, Allahabad which includes the suit amount also. In such view of the fact, the lower

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court erred in exonerating defendants 1 to 5 from the suit claim. The lower court has not taken into account of Exhibits B.8 and B.9, resulting to a wrong conclusion in holding that defendants 1 to 5 are not liable to suit claim. The first defendant is the party to the suit in O.S.No.4496 of 1983 on the file of the City Civil Court, Allahabad. The 7th defendant is also a party to the suit. In fact, 7th defendant in the suit set the law into the motion in the City Civil Court, Allahabad against the 1st defendant herein claiming certain amount including the suit transaction. If the defendants 1 to 5 are exonerated in this suit, they may use the same in the suit in O.S.4496 of 1983 on the file of the City Civil Court, Allahabad for exoneration. That case is also related to the present suit transaction. So, I am constrained to hold that defendants 1 to 5 are also reliable for the suit transaction. Hence, I answered this point accordingly.

18. In the result, the appeal fails and accordingly dismissed. The findings of the lower court in decreeing the suit against defendant 6 and 7 alone is modified and the suit is decreed against defendants 1 to 7 as prayed for by the plaintiff. However, the parties have to hear their respective costs.

nvsri

Sd/
Asst.Registrar

/true copy/

Sub Asst.Registrar

To

1. The I Additional Subordinate Judge, Coimbatore.

2. The Section Officer,VR Section, High Court, Madras.

+ 1 cc to Mr. J. Ramakrishnan, Advocate, SR No.9233

+ 1 cc to Mr. Srinath Sridevan, Advocate, SR No.9208

Judgment
in A.S.No.575 of 1991

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SR/2.4.2007

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